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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL FOX,

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

Civil Case No. 07CV2388-DMS (POR)

FEDERAL DEFENDANTS' REPLY
BRIEF IN SUPPORT OF THEIR
MOTION TO DISMISS PLAINTIFF'S
ACTION

Date: May 16, 2008
Time: 1:30 p.m.
Crtrm: 10
Judge: Hon. Dana Sabraw

[No Oral Argument per local rule
Unless Requested by the Court]

I. INTRODUCTION

In opposition to the Federal Defendants' motion to dismiss, Plaintiff continues to allege that he is the victim of a vast conspiracy. However, Plaintiff brings forward no new evidence, and instead continues the exercise of making unsubstantiated conclusory allegations that are insufficient to sustain his case. In fact, Plaintiff does not cite a single legal authority in any of the papers he filed in opposition to Defendant's motion to dismiss. It is axiomatic that allegations unsupported by facts or law are generally regarded with suspicion and not considered persuasive. See e.g. Young v. Piller, 2008 WL 1757564 (9th Cir. 2008); Ortega-Miguel v. Keisler, 254 Fed.Appx. 609 (9th Cir. 2007)^{1/}

II. DISCUSSION

As Plaintiff raises very little in the way of new evidence or argument, the majority of Plaintiff's contentions will not be addressed here, having already been addressed in Defendant's opening brief. As noted in the opening brief, although a pro se plaintiff is entitled to some degree of latitude in composing a complaint, they still must meet Rule 8's basic standards. See Hilska v. Jones, 217 F.R.D. 16, 21 (D.D.C. 2003). While pro se litigants are afforded additional latitude in composing complaints and pleadings, courts should not act as an advocate for pro se litigants. Daouda v. Dept. of Homeland Security, 2008 WL 1923138 (D. Colo). Courts have dismissed even pro se complaints where they were found to be "a labyrinthine prolixity of unrelated and vituperative charges that defied comprehension" Prezzi v. Schelter, 469 F.2d 691 (2d Cir. 1972); where the complaint is "confusing, ambiguous, redundant, vague, and, in some respects, unintelligible" Wallach v. City of Pagedale, 359 F.2d 57 (8th Cir. 1966)); and where the complaint is "so verbose, confused, and redundant that its true substance, if any, is well disguised" Corcoran v. Yorty, 347 F.2d 222 (9th Cir. 1965)) (all quoted in U.S. Ex. Rel. Dattola v. Nat. Treasury Emp. Union, 86 F.R.D. 496 (W.D. Pa. 1980)). In Brown v. Califano, 75 F.R.D. 497 (D.D.C. 1977), the court dismissed such a complaint as an "untidy assortment of claims that

^{1/} Unpublished opinions issued after January 1, 2007 may be cited as legal authority pursuant 9th Cir. Rule 36-3.

1 are neither plainly nor concisely stated, nor meaningfully distinguished from bold conclusions,
2 sharp harangues and personal comments." 75 F.R.D. at 499. Given the confusing, convoluted
3 and vague nature of the text of Plaintiff's Complaint/Petition, Defendant respectfully asserts that
4 it should be dismissed.

5 Further, Plaintiff admits that he has not filed an administrative claim with the FBI prior
6 to filing this lawsuit. (Plaintiff's Answer to Declaration of Ayana K. Washinton at ¶ 1-2.)
7 Specifically, Plaintiff states that he was unaware of the requirement for exhausting his
8 administrative remedies prior to filing a lawsuit in federal court against a federal entity, and
9 instead elected to proceed with a petition and complaint in federal court. Id. It is well settled
10 law that a Plaintiff must first file an administrative claim with the relevant federal agencies prior
11 to filing suit in federal court. 28 U.S.C. § 2675; Holloman v. Watt, 708 F.2d 1399, 1402 (9th Cir.
12 1983); Johnson v. United States, 704 F.2d 1431, 1442 (9th Cir. 1983). Given this admission,
13 Plaintiff's action must also be dismissed on the separate basis of failing to exhaust his
14 administrative remedies. Id.

15 16 III. CONCLUSION

17 Plaintiff's complaint is comprised of a series of unsupported conclusory allegations.
18 Plaintiff further admits that he failed to exhaust his administrative remedies prior to filing this
19 lawsuit. Defendant therefore respectfully requests that the Court grant Defendant's motion to
20 dismiss Plaintiff's action.

21 DATED: May 8, 2008

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23 /s Steve B. Chu

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26 Attorneys for all Federal Defendants
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